Supreme Court, U.S.
FILED
JUN 28 2004

No. 031717

IN THE

Supreme Court of the United States

BRODERICK JONES,

Petitioner,

v.

REGINALD WILEY,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a cause of action to recover damages for an arrest allegedly made in violation of the Fourth Amendment accrues, and the applicable statute of limitations begins to run, when the allegedly unconstitutional arrest occurs, or only when criminal proceedings arising from that arrest have been terminated in a manner favorable to the accused.

PARTIES TO THE PROCEEDING

The petitioner is Officer Broderick Jones of the Chicago Police Department. The respondent is Reginald Wiley. The City of Chicago was a party to the proceedings below, but this petition raises no issue relating to the judgment with respect to the City.

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PETITION FOR A WRIT OF CERTIORARI

Officer Broderick Jones of the Chicago Police Department respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (App., *infra* at 1a-6a) is reported at 361 F.3d 994 (7th Cir. 2004). The pertinent opinions of the district court (App., *infra* at 8a-16a) are unreported.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on March 22, 2004. A timely petition for rehearing was denied on April 16, 2004. The

jurisdiction of this Court rests upon 28 U.S.C. § 1254(1) (2000).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. Section 1 of the Civil Rights Act of 1871, as amended, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983 (2000).

STATEMENT

On August 26, 2002, respondent Reginald Wiley filed suit against Officer Jones and the City of Chicago alleging a deprivation of his rights under federal law and seeking redress under 42 U.S.C. § 1983 (2000). R. 1. The complaint alleged that on January 9, 2000, Officer Jones planted drugs on respondent and then arrested him on false charges. *Id.* ¶ 5. The complaint also alleged that respondent was required to appear repeatedly in court to answer the charges against him until they were dropped on July 8, 2002. *Id.* ¶ 7. The

complaint sought relief for an allegedly false arrest under the Fourth Amendment and for a deprivation of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. *Id.* ¶ 9.[1]

The district court dismissed the action. The court concluded that respondent could advance no due process claim because he was never tried on the charges against him and accordingly was not denied his right to a fair trial under the Due Process Clause. App., *infra* at 9a-13a. The district court also concluded that respondent had failed to bring his Fourth Amendment false arrest claim in a timely fashion. App., *infra* at 12a-13a. Respondent sought reconsideration on only his Fourth Amendment claim. R. 18. The district court denied that motion, reasoning that a Fourth Amendment claim accrues when an allegedly unconstitutional search or seizure occurs, and not when criminal proceedings arising from that search or seizure are subsequently concluded. App., *infra* at 15a-16a. The court accordingly ruled that because respondent had failed to file suit within the applicable two-year limitations period, his Fourth Amendment claim was untimely. App., *infra* at 14a, 16a.

The court of appeals reversed the judgment in favor of Officer Jones, concluding that the district court had erred by ruling that respondent's Fourth Amendment claim was untimely. App., *infra* at 4a-5a. The court of appeals observed that in *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court had held that a section 1983 suit was premature if its success would "necessarily imply the invalidity of a conviction or sentence," and that the Seventh Circuit had previously held that the rule of *Heck* "applies not only to convicted persons but also to plaintiffs like [respondent] who

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[1] The complaint also sought relief under state law for the tort of malicious prosecution. R. 1 ¶ 9. The district court ultimately declined to exercise supplemental jurisdiction over the state-law claim. App., *infra* at 13a.

as yet only face prosecution." App., *infra* at 3a. The court acknowledged that some wrongful arrest claims accrue immediately under *Heck*, since "one can have a successful wrongful arrest claim and still have a perfectly valid conviction." App., *infra* at 4a (quoting *Booker v. Ward*, 94 F.3d 1052, 1056 (7th Cir. 1996), cert. denied, 519 U.S. 1113 (1997)). Nevertheless, in this case, the court held that "[i]f, as alleged, [respondent] was arrested and prosecuted solely on the basis of drugs planted by the arresting officers, then any attack on the arrest would necessarily challenge the legality of the prosecution premised on the planted drugs." App., *infra* at 4a. The court held that respondent's Fourth Amendment claim did not accrue until the criminal charges against him were dropped and therefore the claim was timely. App., *infra* at 4a-5a. The court added that damages were available under the Fourth Amendment only for the period of time between respondent's arrest and the filing of charges against him, at which point the applicability of the Fourth Amendment was at an end. App., *infra* at 5a-6a. The court affirmed the judgment in favor of the City of Chicago, holding that respondent had abandoned his claim against the City by failing to advance it on appeal. App., *infra* at 6a.

REASONS FOR GRANTING THE PETITION

There is rampant confusion and outright conflict in the circuits on the application of this Court's holding in *Heck v. Humphrey* to Fourth Amendment false arrest claims. The circuits divide into competing camps on *Heck*'s meaning for Fourth Amendment claims, and the disorder is only growing. The accrual rule adopted by the Seventh Circuit, moreover, is inconsistent with critical aspects of this Court's reasoning in *Heck*. Indeed, the error below becomes particularly apparent in light of this Court's subsequent decision in *Nelson v. Campbell*, 124 S. Ct. 2117 (2004). In addition, the accrual rule adopted by the Seventh Circuit for Fourth Amendment claims (and used in at least three other circuits as well)

creates serious practical difficulties for courts and litigants alike. Accordingly, the court should grant plenary review or, in the alternative, vacate the judgment below and remand for reconsideration in light of the intervening decision in *Nelson*.

1. In *Heck*, this Court held that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." 512 U.S. at 487. Thus, when a section 1983 claim, if successful, would require vacatur of a state tribunal's judgment, that claim is not cognizable. See *Edwards v. Balisok*, 520 U.S. 641, 645-46 (1997). Conversely, "if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed . . . ." *Heck*, 512 U.S. at 487 (emphasis in original). In *Heck*, the Court concluded that the petitioner's section 1983 claim was premature because his claim attacked the constitutionality of a conviction that was still in effect, meaning that "the § 1983 claim has not yet arisen." *Id.* at 489. And while *Heck* itself was filed by a plaintiff currently under a judgment of conviction, every circuit to consider the question has held that *Heck* delays accrual of section 1983 cases brought not only by convicted criminal defendants, but also of claims brought by persons facing pending criminal charges when the suit, if successful, would necessarily invalidate a potential conviction on the pending charges. See, *e.g.*, *Harvey v. Waldron*, 210 F.3d 1008, 1013-14 (9th Cir. 2000); *Beck v. City of Muskogee Police Department*, 195 F.3d 553, 557 (10th Cir. 1999); *Shamaeizadeh v. Cunigan*, 182 F.3d 391, 397-98 (6th Cir.), cert. denied, 528 U.S. 1021 (1999); *Covington v. City of New York*, 171 F.3d 117, 124-25 (2d Cir.), cert. denied, 528 U.S. 946 (1999); *Uboh v. Reno*, 141 F.3d 1000, 1006-07 (11th Cir.

1998); *Washington v. Summerville*, 127 F.3d 552, 556 (7th Cir. 1997), cert. denied, 523 U.S. 1073 (1998); *Smith v. Holtz*, 87 F.3d 108, 113 (3d Cir.), cert. denied, 519 U.S. 1041 (1996); *Mackey v. Dickson*, 47 F.3d 744, 746 (5th Cir. 1995) (per curiam). Thus, the Seventh Circuit applied *Heck* to this case even though respondent was never convicted on the charges against him. See App., *infra* at 3a.

In *Heck*, even as the Court held that the claim before it would not accrue unless and until the judgment of conviction were set aside, the Court distinguished Fourth Amendment claims:

> [A] suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in § 1983 plaintiff's still outstanding conviction. Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful.

512 U.S. at 487 n.7 (emphasis in original) (citations omitted).[2] As the Seventh Circuit itself has noted, the import of *Heck*'s footnote 7 is not entirely clear:

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[2] The Court offered a qualification to this observation:

> An example of . . . a § 1983 action that does not seek damages directly attributable to conviction or confinement but whose successful prosecution would necessarily imply that the plaintiff's criminal conviction was wrongful . . . would be the following: A state defendant is convicted of and sentenced for the crime of resisting arrest, defined as intentionally preventing a peace officer from effecting a *lawful* arrest. (This is a common definition of that offense.) He then brings a § 1983 action against the arresting officer, seeking damages for violation of his Fourth Amendment right to be free from unreasonable seizures. In order to prevail in this § 1983 action, he would have to negate an element of the offense of which he has been convicted.

512 U.S. at 486 n.6 (emphasis in original) (citations omitted).

> On the one hand, it could mean that some Fourth Amendment claims brought under § 1983 would not necessarily be barred if the record revealed the tainted evidence used against the plaintiff at the criminal trial would have been admitted anyway (e.g. under a theory of inevitable discovery). In that case, the district court presumably would have to determine whether the record supported such a theory. On the other hand, the footnote might mean that Fourth Amendment claims for unlawful searches or arrest do not necessarily imply a conviction is invalid, so in all cases these claims can go forward.

Copus v. City of Edgerton, 151 F.3d 646, 648 (7th Cir. 1998). And, indeed, footnote 7 has spawned considerable confusion in the circuits.

Four circuits have concluded that when success on a section 1983 Fourth Amendment claim would mean that evidence material to an accused's guilt or innocence in parallel state criminal proceedings should have been suppressed as the fruit of a Fourth Amendment violation, the Fourth Amendment claim does not accrue. For example, in *Harvey*, the Ninth Circuit observed that "the evidence seized in the allegedly unlawful search—gaming devices—was an essential element of the crime for which Harvey was charged—illegal possession of gaming devices." 210 F.3d at 1015-16. The court concluded that Harvey's Fourth Amendment claim was not "cognizable under *Heck* until the criminal charges against him were dismissed in December 1994." *Id.* at 1016. In *Shamaeizadeh*, the plaintiff had been charged with possession of marijuana plants and growing equipment as a result of a search that Shamaeizadeh claimed had violated the Fourth Amendment, and eventually criminal proceedings resulted in suppression of the plants and equipment. See 182 F.3d at 393-94. The Sixth Circuit concluded that Shamaeizadeh's section 1983 claim did not accrue until after criminal proceedings had terminated in his favor since "it appears that the only evidence to be introduced against

Shamaeizadeh was evidence discovered in Shamaeizadeh's house during the allegedly illegal search . . . ." *Id.* at 398. In *Woods v. Candela*, 47 F.3d 545 (2d Cir.) (per curiam), cert. denied, 516 U.S. 808 (1995), the court held that the plaintiff's Fourth and Fifth Amendment claims did not accrue until a state appellate court had concluded that his motion to suppress evidence should have been granted and the indictment against him dismissed. See *id.* at 546. The court applied that approach in *Covington*, and found that it could not decide whether the plaintiff's section 1983 false arrest claim had accrued before criminal charges against him had been dismissed because there was no information in the record "as to the nature of the evidence which might have been available against him in those proceedings." 171 F.3d at 123. The case was remanded to the district court to determine whether the prosecution could have been based on evidence other than that tainted by the alleged Fourth Amendment violation. See *id.* at 123-24. The Seventh Circuit took this same view of *Heck* in *Gauger v. Hendle*, 349 F.3d 354 (7th Cir. 2003). In that case, the court held that when a claim of illegal arrest would require suppression of a confession necessary to prove a subsequently filed charge beyond reasonable doubt, a false arrest claim would not accrue until criminal proceedings were terminated favorably to the accused. See *id.* at 361-62. The court of appeals followed that holding in the decision below. See App., *infra* at 5a.

In contrast, five other circuits have concluded that section 1983 claims that do not inevitably taint an ensuing prosecution or conviction accrue immediately on a constitutional violation even if they produce evidence material to an ensuing criminal prosecution. In *Beck*, for example, the plaintiff brought Fourth Amendment section 1983 claims attacking his arrest on a rape charge and the search and seizure of his vehicle in connection with that arrest. See 195 F.3d at 556, 558. The court concluded that Beck's Fourth Amendment claims accrued when the search and seizure

occurred and therefore were barred by the statute of limitations even though the rape charge had been brought against Beck and his probation had subsequently been revoked on the basis of the rape victim's testimony. See *id.* at 558-59. Relying on *Heck*'s footnote 7, the court concluded that "*Heck* does not affect the time these claims arose because ultimate success on them would not necessarily question the validity of a conviction resulting from the rape charge or his probation revocation." *Id.* at 558. The court added that "nothing in *Heck* changes the general rule that causes of action relating to an allegedly illegal arrest arise at the time of the arrest." *Ibid.* The court acknowledged that "[s]everal cases have held that whether a plaintiff's illegal arrest claim is affected by *Heck* depends on whether the evidence obtained as a product of the arrest is used at trial," and wrote, "[w]e generally disagree with the holdings in these cases because they run counter to *Heck*'s explanation that use of illegally obtained evidence does not, for a variety of reasons, necessarily imply an unlawful conviction." *Id.* at 559 n.4. Similarly, in *Nieves v. McSweeney*, 241 F.3d 46 (1st Cir. 2001), the court, citing *Beck*, held that even though the appellants had been tried on charges arising from their arrest, "claims based on the officers' physical abuse or arrest of the appellants accrued at the time those events occurred . . . ." *Id.* at 52. In *Brooks v. City of Winston-Salem*, 85 F.3d 178 (4th Cir. 1996), the court held that the plaintiff's false arrest claim accrued upon his arrest, even though he was subsequently prosecuted on the charge on which he had been arrested because "on the day of his arrest Brooks knew or should have known both of the injury resulting from his allegedly illegal seizure and who was responsible for that injury." *Id.* at 182. In addressing *Heck*, the court reasoned that "a charge that probable cause for a warrantless arrest was lacking, and thus that the seizure was unconstitutional, would not necessarily

implicate the validity of a subsequently obtained conviction—at least in the usual case." *Ibid.*[3] In *Simmons v. O'Brien*, 77 F.3d 1093 (8th Cir. 1996), the plaintiff brought a section 1983 action seeking damages for an allegedly coerced confession even though his motion to suppress that confession had been denied and his conviction had been upheld on appeal and in post-conviction proceedings. See *id.* at 1094. The court nevertheless concluded that the section 1983 claim had accrued, applying footnote 7 of *Heck*: "Because harmless error analysis is applicable to the admission at trial of coerced confessions, judgment in favor of Simmons on this § 1983 action challenging his confession will not *necessarily* demonstrate the invalidity of his conviction." *Id.* at 1095 (emphasis in original). Similarly, in *Datz v. Kilgore*, 51 F.3d 252 (11th Cir. 1995) (per curiam), the court held that the plaintiff's section 1983 claim challenging under the Fourth Amendment a search of his car that produced a rifle had accrued even though the plaintiff had pled guilty to the charge of being a felon in possession of the rifle, again relying on *Heck*'s footnote 7: "Datz's conviction might still be valid considering such doctrines as inevitable discovery, independent source, and harmless error." *Id.* at 253 n.1. The court reaffirmed the holding of *Datz* in *Hughes v. Lott*, 350 F.3d 1157, 1160-61 (11th Cir. 2003).

Thus, in the First, Fourth, Eighth, Tenth, and Eleventh Circuits, Fourth Amendment claims accrue even before a charge is dismissed or a conviction is vacated without any inquiry into the record of the underlying criminal proceedings to determine whether evidence essential to the prosecu-

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[3] The court qualified this statement by referring to *Heck*'s footnote six where this Court observed that a false arrest claim based on resisting arrest where one of the elements of the offense is that the arrest was lawful is barred until the conviction is set aside. See 85 F.3d at 182.

tion would be tainted if the alleged constitutional violation were established.

The Fifth Circuit takes yet a third view. It agrees with the Second, Sixth, Seventh and Ninth Circuits that *Heck* delays accrual of some false arrest claims, but it will not attempt to determine if a false arrest claim has accrued while the underlying criminal proceeding is still ongoing. Thus, in *Mackey*, the court concluded that if a section 1983 plaintiff alleging a false arrest "is convicted and evidence is presented by the prosecution at his criminal trial which is a direct or indirect product of one or more of his arrests, then his section 1983 damage claims challenging the validity of his arrests would appear to undermine the validity of his conviction and hence be barred by *Heck*." 47 F.3d at 746. But because the court could not yet tell what evidence would be offered against the plaintiff in the criminal proceedings pending against him, instead of remanding as in *Covington*, it directed the district court to "stay proceedings in the section 1983 case until the pendant criminal case has run its course, as until that time it may be difficult to determine the relation, if any, between the two." *Ibid.*

In short, as the Ninth Circuit has observed, "[t]here is a split in the circuits as to how *Heck*'s footnote 7 should be interpreted." *Harvey*, 210 F.3d at 1015. See also, *e.g.*, *Hughes*, 350 F.3d at 1160-61; *Shamaeizadeh*, 182 F.3d at 395. Commentators have also remarked upon the intractable nature of this conflict. See, *e.g.*, John Stanfield Buford, *When The Heck Does This Claim Accrue?* Heck v. Humphrey*'s Footnote Seven and § 1983 Damages Suits For Illegal Search and Seizure*, 58 Wash. & Lee L. Rev. 1493 (2001); Paul D. Bink, Note, *The Emergence of Divergence: The Federal Courts' Struggle To Apply* Heck v. Humphrey *To § 1983 Claims For Illegal Searches*, 35 Ind. L. Rev. 1085 (2002). The existence of this conflict is understandable; there is little doubt that ambiguity resides within *Heck*'s footnote 7 itself.

In light of the confusion and outright conflict in the circuits, this Court's guidance is needed.[4]

2. The court of appeals' holding in this case, like the similar holdings in four other circuits, misapprehends the accrual principles articulated in *Heck* and subsequent cases. These circuits, as we explain above, understand *Heck* to delay accrual in cases when a Fourth Amendment claim, if successful, would require suppression of evidence essential to sustain the charge against the accused. Thus, these circuits ask whether the Fourth Amendment claim could be sustained without requiring the exclusion of evidence necessary to convict the accused. That approach reflects a flawed understanding of *Heck*.

In *Heck*, the Court expressly declined to adopt a rule that section 1983 actions should be barred whenever they "would resolve a necessary element to a likely challenge to a conviction . . . ." 512 U.S. at 488. *Heck* accordingly was not based on a concern about potential inconsistencies between the judgments of state and federal courts, which the Court

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[4] The confusion spawned by footnote 7 is well illustrated by the uneven course charted by the Seventh Circuit itself. That court had repeatedly held that Fourth Amendment claims accrue immediately under *Heck* even when those claims are eventually sustained in the underlying criminal proceedings, causing the suppression of such critical evidence that the prosecution was abandoned. See, *e.g.*, *Gonzalez v. Entress*, 133 F.3d 551, 553-54 (7th Cir. 1998); *Washington*, 127 F.3d at 556-57; *Booker*, 94 F.3d at 1054-56. Indeed, the court had at one time stated that "any § 1983 claim for damages resulting from a false arrest is not barred by *Heck* and accrues immediately after the arrest, because such alleged violations of the Fourth Amendment would not necessarily impugn the validity of the conviction." *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 897 (7th Cir. 2001). Accord *Copus*, 151 F.3d at 648. Other circuits had understood the law in the Seventh Circuit in this fashion as well. See *Harvey*, 210 F.3d at 1015; *Shamaeizadeh*, 182 F.3d at 395. The Seventh Circuit reversed field in *Gauger*, dismissing its prior statements as mere "dicta." 349 F.3d at 361.

explained are properly addressed not by rules about the scope of section 1983 but instead by a variety of other doctrines that reflect principles of comity between the federal and state courts. See *id.* at 488-90 & nn. 8-9. Instead of expressing concern about any inconsistency between the rulings of federal and state courts about what evidence may be tainted by a constitutional violation, *Heck* rested its holding on the principles governing the damages available to plaintiffs who cannot establish that antecedent legal proceedings terminated in their favor. The Court observed:

> The common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here because, unlike the related action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process. If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment, but not more. But a successful malicious prosecution plaintiff may recover, in addition to general damages, compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of society.

Id. at 484 (internal quotations and citations omitted). Thus, the Court distinguished false arrest and malicious prosecution actions, noting that Heck's claim was properly characterized as malicious prosecution because it sought damages for confinement pursuant to legal process. Then, to determine when Heck's action accrued, the Court noted that "[o]ne element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Ibid.* Because Heck had advanced what was properly characterized as a malicious prosecution action, the Court held that his claim did not accrue until the underlying criminal proceeding had terminated in his favor. See *id.* at 489-90.

This discussion makes the Seventh Circuit's error manifest. As the court of appeals acknowledged in the decision below, respondent's Fourth Amendment claim enables him to recover damages only for the deprivation of his liberty prior to the time that charges were brought against him, because the Fourth Amendment's applicability is at an end once the arrestee is charged with an offense. See App., *infra* at 6a. See also *Gauger*, 349 F.3d at 362-63.[5] As *Heck* explains, such claims are properly characterized as asserting a false arrest, not a malicious prosecution. Indeed, as the Seventh Circuit also acknowledged, respondent has insisted that his claim "was not one for malicious prosecution." App., *infra* at 6a. Yet under the accrual rule adopted in *Heck*, favorable termination of the underlying criminal proceedings is required for a malicious prosecution action, but not for a false arrest claim. Thus, the Seventh Circuit, like the Second, Fifth, Sixth, and Ninth Circuits, has misread the accrual principles found in *Heck* by imposing a favorable termination requirement for accrual of a section 1983 false arrest claim. *Heck* makes clear that false arrest claims accrue at the time of the arrest—long before the resulting criminal proceedings will have terminated.

To be sure, *Heck* also expresses concern about the use of section 1983 to mount "a collateral attack on the conviction

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[5] In *Albright v. Oliver*, 510 U.S. 266 (1994), Justice Ginsburg expressed the view that an individual facing criminal charges is subject to a "continuing seizure" as long as the prosecution lasts and accordingly a Fourth Amendment claim does not accrue until the prosecution ends. See *id.* at 277-80 (concurring opinion). Two other Members of the Court expressed agreement with this conclusion. See *id.* at 307 (Stevens, J., joined by Blackmun, J., dissenting). The Seventh Circuit has consistently rejected this view, however, as the decision below notes. See App., *infra* at 5a-6a. Instead, the decision below rests on an interpretation of *Heck* and not a theory of "continuing seizure." Nevertheless, if the petition is granted, this case would provide an appropriate vehicle for the Court to consider the accrual rule endorsed by three Justices in *Albright*.

through the vehicle of a civil suit." 512 U.S. at 484. And in his separate opinion, Justice Souter opined that *Heck* may well stand only for the proposition that a litigant under an outstanding judgment of conviction may not use section 1983 as a vehicle for circumventing the requirement in the habeas corpus statute of exhausting state remedies before challenging the lawfulness of his confinement in federal court. See *id.* at 498-501 (Souter, J. concurring in the judgment). But even on that view, the accrual rule adopted by the Seventh Circuit, as well as the similar holdings in the Second, Fifth, Sixth, and Ninth Circuits, remains indefensible.

It has long been settled that a challenge to the fact or duration of confinement pursuant to the judgment of a state court is cognizable only under the habeas corpus statute. See *Preiser v. Rodriguez*, 411 U.S. 474 (1973). See also 28 U.S.C. § 2254 (2000). It follows that a section 1983 claim that does not attack the fact or duration of the plaintiff's confinement pursuant to legal process accrues even under *Heck*, as at least six Members of the Court have observed. See *Spencer v. Kemna*, 523 U.S. 1, 20-21 (1998) (Souter, J., joined by O'Connor, Ginsburg, and Breyer, JJ., concurring); *id.* at 21-22 (Ginsburg, J., concurring); *id.* at 25 n.8 (Stevens, J., dissenting); *Heck*, 512 U.S. at 490-91 (Thomas, J., concurring). This Court's most recent decisions applying *Heck* make this point particularly clear. In *Muhammad v. Close*, 124 S. Ct. 1303 (2004), for example, the Court held that a section 1983 suit brought by a prisoner seeking damages for the conditions of his confinement prior to a prison disciplinary hearing accrued at that time because "he raised no claim on which habeas relief could have been granted on any recognized theory, with the consequence that *Heck*'s favorable termination requirement was inapplicable." *Id.* at 1306. *Nelson v. Campbell*—a case not decided until after the court of appeals' decision in this case—was even more pointed on the subject of *Heck*. In *Nelson*, the Court held that a prisoner under a sentence of death could bring a

section 1983 action challenging the method to be used to administer a lethal injection because the action would not attack a state court's judgment or prevent it from being carried out. See 124 S. Ct. at 2123-24. The Court also explained why the action was cognizable despite *Heck*'s holding that some section 1983 actions cannot be brought until the underlying judgment against the accused has been vacated:

> This "favorable termination" requirement is necessary to prevent inmates from doing indirectly through damages actions what they could not do directly by seeking injunctive relief—challenge the fact or duration of their confinement without complying with the procedural limitations of the federal habeas statute. Even so, we were careful in *Heck* to stress the importance of the term "necessarily." For instance, we acknowledged that an inmate could bring a challenge to the lawfulness of a search pursuant to § 1983 in the first instance, even if the search revealed evidence used to convict the inmate at trial, because success on the merits would not "*necessarily* imply that the plaintiff's conviction was unlawful." To hold otherwise would have cut off potentially valid damages actions as to which a plaintiff might never obtain favorable termination—suits that could otherwise have gone forward had the plaintiff not been convicted. In the present context, focusing attention on whether petitioner's challenge to the cut-down procedure would *necessarily* prevent Alabama from carrying out its execution both protects against the use of § 1983 to circumvent any limits imposed by the habeas statute and minimizes the extent to which the fact of a prisoner's imminent execution would require differential treatment of his otherwise cognizable § 1983 claim.

Id. at 2124 (emphasis in original) (citations omitted). Thus, *Nelson* makes clear that *Heck* bars section 1983 actions only when they challenge the fact or duration of confinement or otherwise assert a claim necessarily premised on the fact that

the section 1983 plaintiff was charged with or convicted of a crime.

Thus, at least after *Nelson*, the approach to section 1983 Fourth Amendment claims taken by the Second, Fifth, Sixth, Seventh, and Ninth Circuits is wholly untenable. A false arrest claim does not challenge the fact or duration of confinement or state a claim necessarily available only to those who have been charged with or convicted of a crime. Nor does a false arrest claim necessarily attack the validity of an arrestee's subsequent conviction. To the contrary, "the established rule [is] that illegal arrest or detention does not void a subsequent conviction." *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975). Accord, *e.g.*, *United States v. Crews*, 445 U.S. 463, 474 (1980) ("An illegal arrest, without more, has never been viewed . . . as a defense to a valid conviction."). Even when an alleged Fourth Amendment violation produces all the evidence used to prosecute the accused, a subsequent conviction still does not bar the accused from seeking damages under section 1983 for the violation of his Fourth Amendment rights, as this Court squarely held in *Haring v. Prosise*, 462 U.S. 306 (1983). In that case, the Court concluded that a prisoner's section 1983 action to recover damages for an illegal search and seizure was not inconsistent with his plea of guilty to possessing the items found in the search. See *id.* at 316. At most, *Heck* only limits the damages available in such an action by holding that the "actual, compensable injury" for which damages are available under section 1983 "does *not* encompass the 'injury' of being convicted and imprisoned (until his conviction has been overturned)." 512 U.S. at 487 n.7 (emphasis in original). Similarly, a claim for false arrest can be immediately brought despite *Heck* because it does not depend on whether the arrestee is subsequently prosecuted or convicted. Indeed, it is clear that the victim of an allegedly unconstitutional arrest

may seek damages for the arrest even if he is never subsequently prosecuted. See, *e.g.*, *Monroe v. Pape*, 365 U.S. 167 (1961).

In this case, the damages that the court of appeals has held respondent may pursue for the deprivation of his liberty prior to the time that he was charged with an offense are plainly damages that respondent would have been able to recover even if he had never been charged with a crime. *Nelson* clearly explains that the ability to sue for such damages is unaffected by the favorable termination requirement of *Heck*. Because the decision below applies *Heck*'s favorable termination requirement to respondent's claim, it is inconsistent with *Nelson*, which preserves suits that could otherwise have gone forward if the plaintiff had not been criminally prosecuted.[6]

3. The approach to accrual of Fourth Amendment section 1983 claims taken by the Second, Sixth, Seventh, and Ninth Circuits also creates serious practical problems for litigants and courts alike. That is because these circuits understand *Heck* to delay accrual only in cases where the section 1983 plaintiff could not be convicted based on evidence untainted

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[6] To be sure, if a section 1983 Fourth Amendment action is brought while a related state criminal prosecution is pending, there is the possibility that the federal civil action will interfere with the state prosecution. As *Heck* itself explains, however, the appropriate way to address that problem is to stay the federal action pending the outcome of the criminal proceeding, rather than to hold that the federal action cannot be brought. See 512 U.S. at 487 n.8. Moreover, the state court's findings on a Fourth Amendment issue, made in the criminal litigation, will be binding in the subsequent section 1983 litigation. See *Allen v. McCurry*, 449 U.S. 90 (1980). These abstention and preclusion doctrines minimize friction between federal and state adjudications and confirm that these claims can and should accrue without regard to the pendency of a criminal prosecution.

by the alleged Fourth Amendment violation. It will, however, frequently be quite difficult for litigants and courts to apply this test.

A defendant facing criminal charges who believes that his arrest violated the Fourth Amendment will frequently be unable to determine whether or not evidence independent of this violation is available to the prosecution. After all, when the criminal case has yet to be tried, the accused cannot know with certainty what evidence will be offered against him and thus cannot know whether evidence that the accused believes to be the fruit of a Fourth Amendment violation would be essential. Accordingly, under the accrual rule adopted below and in at least three other circuits, the accused will frequently be unable to determine whether his Fourth Amendment claim has accrued because he will not know how essential the evidence that he believes to be tainted by a Fourth Amendment violation is likely to be to the prosecution's case against him. And if the accused attempts to deal with this uncertainty by filing his section 1983 suit immediately—to avoid the risk of an eventual ruling that his section 1983 claim is time barred—the litigants and the district court must then that speculate about what evidence the prosecution will offer at trial—or would have offered at trial if the case is ultimately resolved without need of a trial. As Judge Glasser explained in his dissenting opinion in *Covington*,

> The remand the majority would adopt would place upon the district court an impossible and totally unrealistic burden. It would require that court to determine and assess the strength of all the evidence available to the state, to determine whether a motion to suppress evidence or statements based upon an allegedly unlawful arrest or a claimed unreasonable search should be denied because any one or more of the many exceptions would permit the evidence to be received, e.g., that the evidence seized was in plain view; would have been inevitably discovered; was obtained during an

> inventory search; was subject to a good faith exception; was seized under exigent circumstances; when the statement was made the interrogation was no longer custodial; or whether the state had evidence entirely independent of an arrest or search that would have been enough to obtain a conviction such as the testimony of an eye witness or informant.

171 F.3d at 128.

The problems to which Judge Glasser referred in his *Covington* dissent are not uncommon. As cases such as *Covington*, *Gauger*, and *Mackey* demonstrate, pending charges frequently rest on a combination of evidence tainted by an alleged Fourth Amendment violation and independent evidence. Accordingly, determining whether the cause of action accrued immediately upon the accused's arrest is no simple matter. Even a case like this one—in which the section 1983 plaintiff claims that the entire case against him was fabricated—determining whether the cause of action has accrued may not be easy. While respondent's complaint alleges that the case against him rested entirely on the fabricated account of Officer Jones, of course he cannot know whether Officer Jones would have been the only witness called against him had the case gone to trial. The prosecution is frequently able to pursue charges based on evidence independent of an alleged Fourth Amendment violation. Statutes of limitations, like jurisdictional rules, should be free from doubt. The accrual rule adopted below, however, is anything but.

Moreover, the accrual rule used in the Second, Fifth, Sixth, Seventh, and Ninth Circuits threatens the sound administration of justice. Under that rule, the accrual of Fourth Amendment claims will frequently be delayed for years—until criminal cases are resolved by trial, appeal, or even post-conviction proceedings. This accrual rule therefore undermines a fundamental purpose of any statute of limitations—

"to protect the federal system from being forced to hear stale claims." *Carey v. Saffold*, 536 U.S. 214, 226 (2002). Accord, *e.g.*, *Young v. United States*, 535 U.S. 43, 47 (2002); *Rotella v. Wood*, 528 U.S. 549, 555 (2000). This problem is particularly acute for big-city police officers, who frequently make dozens of arrests in a year and will have difficulty recalling the particulars of any given arrest years later—whereas the section 1983 plaintiff will frequently and credibly claim to have a perfect memory of the events at issue. The interests of justice favor prompt litigation of Fourth Amendment claims, while memories are still fresh and critical witnesses and documents are still available.

4. There is an urgent need for this Court's guidance on the question presented by this petition. False arrest suits brought by individuals who have been prosecuted on related charges are ubiquitous. The ambiguity of *Heck*'s footnote 7 requires litigants and courts to devote substantial resources to litigating the accrual rules governing Fourth Amendment claims, rather than addressing the merits of these cases. The interests of justice will plainly be served by an authoritative resolution of the accrual principles applicable to Fourth Amendment claims. In the alternative, because the intervening decision in *Nelson* has considerably clarified the law in this area, the Court may wish to summarily vacate the judgment of the court of appeals and remand this case to the court of appeals for reconsideration in light of the decision in *Nelson*.

CONCLUSION

For the preceding reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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